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COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY

5 CFR Chapter XCVIII

Freedom of Information Act Regulations

AGENCY: Council of the Inspectors General on Integrity and Efficiency.

ACTION: Final rule.

SUMMARY: The Council of the Inspectors General on Integrity and Efficiency (CIGIE) issues this regulation establishing its Code of Federal Regulations chapter to provide the procedures and guidelines under which CIGIE will implement the Freedom of Information Act (FOIA). The final rule describes the policies and procedures for public disclosure of information required to be disclosed under FOIA.

DATES: This regulation is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

FOR FURTHER INFORMATION CONTACT: Mark D. Jones, Executive Director, Council of the Inspectors General on Integrity and Efficiency, (202) 292-2600, Council of the Inspectors General on Integrity and Efficiency, 1717 H Street, NW, Suite 825 Washington, DC 20006.

SUPPLEMENTARY INFORMATION: The Council of the Inspectors General on Integrity and Efficiency (CIGIE) is issuing this regulation to provide the procedures and guidelines under which CIGIE will implement the Freedom of Information Act (FOIA) (5 U.S.C. 552). On July 20, 2012, CIGIE published a proposed rule implementing the Freedom of Information Act (FOIA) (U.S.C. 552) in the Federal Register. See 77 FR 42673, July 20, 2012. CIGIE provided interested persons with an opportunity to participate in the rulemaking through submission of written comments on the proposed rule. The comment period closed on September 18, 2012. CIGIE did not receive any comments during the 60-day comment period.

In issuing this regulation, CIGIE adhered to the regulatory philosophy and the applicable principles of regulation as set forth in Section 1 of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735. This regulation has not been reviewed by the Office of Management and Budget under the Executive Order since it is not a significant regulatory action within the meaning of the Executive Order. For purposes of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), CIGIE certifies that the final regulations in this part do not contain any new reporting or record-keeping requirements.

List of Subjects in 5 CFR Part 9800

Appeals, Freedom of Information Act, Information, Privacy, Records.

Accordingly, as set forth in the preamble, the Council of the Inspectors General on Integrity and Efficiency establishes 5 CFR Chapter XCVIII, consisting of parts 9800 through 9899, to read as follows:

Chapter XCVIII – Council of the Inspectors General on Integrity and Efficiency

PART

9800—FREEDOM OF INFORMATION ACT REGULATIONS

9801-9899 [RESERVED]

PART 9800 — FREEDOM OF INFORMATION ACT REGULATIONS

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Authority: Pub. L. 110-409, 122 Stat. 4302; 5 U.S.C. App; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; E.O. 13392, 70 FR 75373-75377, 3 CFR, 2006 Comp., p. 216-200.

§ 9800.1 Purpose.

This part implements the provisions of The Freedom of Information Act (FOIA) (5 U.S.C. 552), as amended, for CIGIE records. These regulations should be read in conjunction with the FOIA, which explains in more detail requesters' rights and

the records CIGIE may release. This regulation should also be read with CIGIE's FOIA Reference Guide, available on CIGIE's web site, <http://www.ignet.gov>, and the FOIA fee guidance provided by the Office of Management and Budget (OMB), Uniform Freedom of Information Act Fee Schedule and Guidelines.

§ 9800.2 CIGIE organization.

(a) CIGIE has a centralized FOIA Program, with one office receiving and coordinating the processing of all requests made to CIGIE. The Integrity Committee (IC) is the single exception to CIGIE's centralized FOIA Program. For FOIA purposes, the IC is a separate entity that follows its own FOIA policies and regulations, and manages its own FOIA resources, structure and processing procedures. By statute, all records received or created by the IC in fulfilling its responsibilities are collected and maintained separately as IC records by the Federal Bureau of Investigation (FBI) in its Central Records System. See Title 28, CFR Part 16, Subpart A. Accordingly, the regulations published below do not apply to requests or appeals for records maintained by the IC.

(b) CIGIE will accept requests or appeals for all CIGIE records – including IC records – at official mailboxes. Requests for IC records will be forwarded to the IC for processing and direct response to the requester.

§ 9800.3 Definitions.

The following definitions apply to this part:

Appeal means a requester's written disagreement with an adverse determination under the FOIA.

CIGIE means the Council of the Inspectors General on Integrity and Efficiency and includes its predecessor agencies, the Executive Council on Integrity and Efficiency (ECIE) and the President's Council on Integrity and Efficiency (PCIE).

Confidential commercial information means records obtained by CIGIE from a business submitter that may contain information exempt from release under Exemption 4 of FOIA, 5 U.S.C. 552(b)(4).

Days, unless stated as "calendar days," are working days and do not include Saturdays, Sundays, and Federal holidays.

Employee, for the purposes of this regulation, means any person currently or formerly holding an appointment to a position of employment with CIGIE, or any agent or independent contractor acting on behalf of or performing work for CIGIE.

FOIA Officer and Chief FOIA Officer are persons designated by the CIGIE Chairperson to grant or deny requests for records under FOIA.

IC means the CIGIE Integrity Committee established under section 11(d) of the Inspector General Act of 1978 (5 U.S.C. App), as amended.

Perfected request means a written FOIA request that meets all of the criteria set forth in § 9800.6.

Reading room means a location where records are available for review pursuant to 5 U.S.C. 552(a)(2).

Record means a document or documentary material maintained in any form, which CIGIE:

(1) Created or received under Federal law or in connection with the transaction of public business;

(2) Preserved or determined is appropriate for preservation as evidence of operations or activities of CIGIE, or due to the value of the information it contains; and

(3) Controls at the time it receives a FOIA request.

Requester means any person, partnership, corporation, association, or foreign or State or local government, which has made a demand to access a CIGIE record under FOIA.

Submitter means any person or entity providing confidential commercial information to the Federal Government.

Unusual circumstances means CIGIE must:

(1) Search for or collect records from agencies, offices, facilities, or locations that are separate from the office processing the request;

(2) Search, review, or duplicate a voluminous number of records in order to process a single request; or

(3) Consult with another agency or component that has a substantial interest in the determination of a request.

§ 9800.4 General provisions.

(a) CIGIE prohibits employees from releasing or disclosing confidential or otherwise nonpublic information that CIGIE possesses, except as authorized by this regulation or by the CIGIE Chairperson, when the disclosure is necessary for the performance of official duties.

(b) CIGIE has designated a FOIA Public Liaison to assist in the resolution of disputes between the agency and the requester. Contact information for CIGIE's FOIA Public Liaison can be found on CIGIE's web site, <http://www.ignet.gov>.

(c) CIGIE is required to prepare an annual report regarding its FOIA activities in accordance with 5 U.S.C. 552(e). CIGIE's annual report contains information about agency FOIA requests and appeals. The annual report is posted on the CIGIE's web site, <http://www.ignet.gov>.

§ 9800.5 Public reading room.

CIGIE maintains an electronic public reading room on its web site, <http://www.ignet.gov>, which contains the records that the FOIA requires be regularly made available for public inspection and copying, as well as additional records of interest to the public.

§ 9800.6 Requirements for making requests.

(a) Requesters may make a request for CIGIE records by writing directly to the CIGIE FOIA Officer through electronic mail, mail, delivery service, or facsimile. The electronic mail address is: FOIASTAFF@cigie.gov. For mail or delivery service, the mailing address is: FOIA Officer, Council of the Inspectors General on Integrity and Efficiency, 1717 H Street, NW, Suite 825 Washington, DC 20006. The facsimile number is: (202) 254-0162. CIGIE's FOIA Reference Guide, which is available on CIGIE's web site, <http://www.ignet.gov>, provides additional information regarding submitting a request.

(b) Requests must be sent to the official CIGIE FOIA mailboxes that are established for the purpose of receiving requests. A request that is sent to an individual employee's mailbox or directly to a CIGIE standing committee address — other than for IC records — will not be considered a perfected request.

Mailbox addresses designated to receive requests are identified in paragraph (a) of this section.

(c) CIGIE will not consider an improperly addressed request to have been received for purposes of the 20-day time limit of § 9800.7 until it is actually received by CIGIE at one of the locations specified in paragraph (a) of this section.

(d) Requests must be made in writing, and should contain the phrase "FOIA Request" on the front of the envelope or on the cover sheet of the facsimile transmittal.

(e) Requests must include the requester's full name and a legible return address. Requesters may include other contact information as well, such as a telephone number and an electronic mail address.

(f) A request must describe the records sought in enough detail to enable CIGIE personnel to locate them with reasonable effort. A requester should include as much specific information as possible regarding dates, titles, names of individuals, and names of agencies or other organizations that may help identify the records. Wide ranging requests that lack specificity or that contain broad descriptions of subject matters without reference to specific records, may be considered "not reasonably described" and therefore not subject to further processing.

(g) If CIGIE determines that a request does not reasonably describe the records, the agency will inform the requester and provide the requester with an opportunity to modify the request. The "date of receipt" in such cases shall be the date of receipt of the modified request.

(h) The time limit for processing the request will be tolled while any fee issue is not resolved. If CIGIE anticipates that the fees for processing the request will exceed the amount that the requester has stated he or she is willing to pay, or will amount to more than \$25.00, the agency will notify the requester. In such cases, the agency will require the requester to agree in writing to pay the estimated fee.

(i) The requester must meet all of the requirements of this section in order for the request to be perfected. CIGIE will only process perfected requests.

§ 9800.7 Agency response to requests for records.

(a) With the exception of IC records, the CIGIE FOIA Officer, the Chief FOIA Officer, and persons designated by the CIGIE Chairperson are solely authorized to grant or deny any request for CIGIE records.

(b) When a request for records is submitted in accordance with § 9800.6, CIGIE shall inform the requester of its determination concerning that request within

20 working days (excepting Saturdays, Sundays, and Federal holidays), plus any extension authorized under § 9800.14. If CIGIE grants the request, CIGIE will inform the requester of any conditions surrounding the granting of the request. If CIGIE grants only a portion of the request, the portion not granted will be treated as a denial. If CIGIE denies the request in whole or in part, CIGIE will inform the requester of that decision and of the following:

(1) The reason for the denial;

(2) The name and title or position of the person responsible for denial of the request;

(3) The requester's right to appeal any such denial and the title and address of the official to whom such appeal is to be addressed; and

(4) The requirement that such appeal be received within 45 days of the date of the denial.

(c) If CIGIE cannot fulfill a request because the records requested are in the custody of another agency outside CIGIE, CIGIE will inform the requester and will forward the request to that agency or department for processing in accordance with this regulation.

§ 9800.8 Multitrack processing.

(a) CIGIE processes requests using a multitrack processing system. There are four processing tracks: an expedited track, if the request qualifies; a simple track for relatively simple requests; a complex track for more complex and lengthy requests; and a remanded track, when a FOIA appeal is granted.

(b) CIGIE processes requests on a "first-in, first-out" basis for each track, unless there are unusual circumstances as referenced in § 9800.14, or the requester is entitled to expedited processing as described in § 9800.11.

§ 9800.9 General provisions respecting release of records.

(a) CIGIE will provide the records in the form or format specified by the requester, if the records are readily reproducible in that form or format.

(b) If the request concerns documents involving a personal privacy interest or documents protected by another confidentiality statute, the requester must provide either a notarized statement or a statement signed under penalty of perjury, declaring that the requester is actually the person he or she claims to be. Original signatures are required.

§ 9800.10 Appeals.

(a) Requesters may appeal the denial of a request by writing directly to the CIGIE FOIA Officer through electronic mail, mail, delivery service, or facsimile. The electronic mail address is FOIASTAFF@cigie.gov. For mail or delivery service, the mailing address is: FOIA Officer, Council of the Inspectors General on Integrity and Efficiency, 1717 H Street, NW, Suite 825 Washington, DC 20006. The facsimile number is: (202) 254-0162. CIGIE's FOIA Reference Guide, which is available on CIGIE's web site, <http://www.ignet.gov>, provides additional information regarding submitting an appeal.

(b) Appeals must be sent to official CIGIE FOIA mailboxes that are established for the purpose of receiving appeals. An appeal that is sent to an individual CIGIE employee's mailbox or directly to a CIGIE standing committee address—other than for IC records—will not be considered a perfected appeal. Mailbox addresses designated to receive appeals are identified in paragraph (a) of this section.

(c) CIGIE will not consider an improperly addressed appeal to have been received for purposes of the 20-day time limit of paragraph (h) of this section until it is actually received by CIGIE at one of the locations specified in paragraph (a) of this section.

(d) FOIA appeals must be in writing, and should contain the phrase "FOIA Appeal" on the front of the envelope or on the cover sheet of the facsimile transmittal.

(e) Appeals must include the requester's full name and a legible return address. Requesters may include other contact information as well, such as a telephone number and an electronic mail address.

(f) Requesters submitting an administrative appeal of a denial of a request for records must ensure that the appeal is received by CIGIE within 45 days of the date of the denial letter.

(g) CIGIE provides for review of appeals by an official different from the official or officials designated to make initial denials.

(h) Upon receipt of an appeal, CIGIE shall inform the requester of its determination concerning that appeal within 20 working days (excepting Saturdays, Sundays, and Federal holidays), plus any extension authorized by § 9800.14. If CIGIE grants the appeal, the agency will inform the requester of any conditions surrounding the granting of the request and the approximate date the response will be in effect. If CIGIE grants only a portion of the appeal, the agency will treat the portion not granted as a denial. If CIGIE denies the appeal in whole or in part, CIGIE will inform the requester of that decision and of the following:

(1) The reason for denial;

(2) The name and title or position of the person responsible for denial of the appeal; and

(3) The right to judicial review of the denial in accordance with 5 U.S.C. 552(a)(4).

(i) A requester may seek judicial review under 5 U.S.C. 552(a)(4) if the denial of his or her request for records was upheld in whole or in part or if a determination respecting an appeal has not been sent within the statutory time limit in paragraph (h) of this section.

(j) A determination by the designated FOIA appeals official pertaining to CIGIE records will be final agency action.

§ 9800.11 Expedited processing.

(a) A requester may apply for expedited processing when submitting an initial request for records. Within 10 calendar days of receipt of a request for expedited processing, CIGIE will decide whether to grant it and will notify the requester of the decision. If a request for expedited treatment is granted, CIGIE will process the request as soon as practicable. If CIGIE denies a request for expedited processing, CIGIE will act expeditiously on any appeal respecting that decision.

(b) A request or appeal will be taken out of order and given expedited treatment when CIGIE determines that the requester has established one of the following criteria:

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(2) An urgency to inform the public about an actual or alleged Federal Government activity, if made by an individual primarily engaged in disseminating information;

(3) The loss of substantial due process rights;

(4) A matter of widespread and exceptional media interest raising possible questions about the Federal Government's integrity which affects public confidence; or

(5) A substantial humanitarian need or interest.

(c) A requester who seeks expedited processing must include a written statement that the requester has certified to be true and correct to the best of the requester's knowledge, explaining in detail the reasons for requesting expedited processing. CIGIE will not consider the request for expedited processing to have been received unless accompanied by such a certified statement, and CIGIE is under no obligation to consider the request for expedited processing until it receives a certified statement.

(d) These procedures apply to requests for expedited processing of administrative appeals.

§ 9800.12 Date of receipt of requests or appeals.

The date of receipt of a request or appeal shall be the date it is received by the CIGIE FOIA office.

§ 9800.13 Handling commercial information obtained from a private business.

When CIGIE cannot readily determine whether the information in its records is privileged or confidential commercial information, it is CIGIE's policy to obtain and consider the views of the submitter of the information and to provide an opportunity to object to any decision prior to disclosure of the information. If CIGIE receives a request for information that has been submitted by a business, CIGIE shall:

(a) Provide the submitter of commercial information with notification of a FOIA request for that information, unless CIGIE readily determines that the information requested should not be disclosed or, alternately, that the information is not exempt from disclosure by law;

(b) Afford the submitter reasonable time in which to object to the disclosure of any specified portion of the information. The submitter must fully explain all grounds for objecting to disclosure of any specified portion of the information. For example, if the submitter maintains that disclosure is likely to cause it substantial competitive harm, the submitter must explain on an item-by-item

basis why disclosure would cause such harm. Information provided by a submitter pursuant to this part may itself be subject to disclosure under FOIA;

(c) Notify the FOIA requester of the need to inform the submitter of a request for the submitted commercial information;

(d) Determine whether the records requested are exempt from disclosure or must be released after carefully considering all reasons provided by a submitter for objecting to disclosure;

(e) Prior to the disclosure date, notify submitters of any determination to disclose such records so that the matter may be considered for possible judicial intervention; and

(f) Notify submitters promptly in all cases in which FOIA requesters bring suit seeking to compel disclosure of submitted information.

§ 9800.14 Extension of administrative deadlines.

In unusual circumstances, CIGIE may extend the 20 working day response time for no more than 10 additional working days for initial requests or appeals and shall notify requesters of:

(a) The reason for the extension; and

(b) The estimated date of completion.

§ 9800.15 Fees.

(a) The current schedule of fees is maintained on CIGIE's web site,
<http://www.ignet.gov>.

(b) Under FOIA, as amended, there are four categories of requesters: Commercial use requesters, educational and non-commercial scientific institutions; representatives of the news media; and all other requesters.

(c) For commercial use requesters, CIGIE assesses charges which recover the full direct costs of searching for, reviewing, and duplicating the records requested. Commercial use requesters are not entitled to receive free search time or duplication referenced in paragraphs (d), (e), and (f) of this section. CIGIE may recover the cost of searching for and reviewing records for commercial use requesters even if no records are ultimately disclosed.

(1) A commercial use requester is considered to be a person who seeks information for a use or purpose that furthers a commercial, trade, or profit interest of the requester or the person on whose behalf the request is made.

(2) In order to determine whether a requester properly belongs in this category, CIGIE must consider whether the requester will put the documents to a commercial use. In cases where CIGIE has reasonable cause to doubt a requester's use of the records sought, or where that use is not clearly identified in the request itself, CIGIE may seek additional clarification from the requester.

(d) Fees for educational and non-commercial scientific institution requesters are limited to the cost of providing standard duplication services alone, without charge for the first 100 pages reproduced. To qualify for this category, requesters must show that the request made is authorized by and under the auspices of an eligible institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly research (if the request is from an educational institution) or scientific research (if the request is from a non-commercial scientific institution).

(1) The term "educational institution" refers to preschools, public or private elementary or secondary schools, institutions of graduate or undergraduate higher education, institutions of professional education, and institutions of vocational education operating one or more programs of scholarly research.

(2) The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis, and which is operated solely for the purpose of conducting scientific research.

(e) For requesters who are representatives of the news media, fees will also be limited to the cost of providing duplication services alone, without charge for the first 100 pages reproduced. No fee will be charged for providing search or review services.

(1) The term "representative of the news media" refers to a person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.

(2) The term "news" means information that is about current events or that would be of current interest to the public.

(3) Examples of news media entities include television or radio stations broadcasting to the public, and publishers of periodicals which disseminate news and who make their products available for purchase or subscription by the general public.

(4) Freelance journalists may be regarded as working for a news organization if they can demonstrate a sufficient basis for expecting publication through that organization, even though not actually employed by it.

(f) Fees for all other requesters who do not fit into any of the above categories will be assessed for the full reasonable direct cost of searching for and duplicating documents that are responsive to a request. No charge will be made to requesters in this category for the first 100 pages reproduced or for the first two hours of search time.

(g) CIGIE will assess fees for searches which fail to locate records or which locate records which are exempt from disclosure at the same rate as searches which result in disclosure of records.

(h) If a fee is incurred in connection with a request or an appeal in accordance with this section, CIGIE will inform the requester of the amount owed and the basis for the fee amount.

(i) Payment for outstanding fees incurred will be billed to the fullest extent possible at the time the requested records are forwarded to the requester. Payments must be made by requesters within 30 days of the date of the billing.

(j) In cases where the estimated fees to be charged exceed \$250.00, CIGIE may require payment of the entire fee or a portion of the fee before it provides any of the requested records.

(k) CIGIE shall require full payment of any delinquent fee owed by the requester plus any applicable interest prior to releasing records on a subsequent request or appeal. If a requester declines to remit payment in advance, CIGIE may refuse to process the request or appeal with written notice to that effect provided to the requester. The "date of receipt" appeal for which advance payment has been required shall be the date CIGIE receives payment.

§ 9800.16 Interest charges.

For requests that result in fees assessed, CIGIE may begin levying interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. Interest will be assessed at the rate prescribed under 31 U.S.C. 3717, and will accrue from the date of the billing.

§ 9800.17 Aggregating requests.

If CIGIE reasonably believes that a requester, or group of requesters acting in concert, is attempting to break down a request into a series of requests for the purpose of evading the assessment of fees, CIGIE may aggregate any such requests and charge accordingly.

§ 9800.18 Fee waivers and reductions.

(a) CIGIE may waive or reduce fees if disclosure of the information sought is deemed to be in the public interest. A request is made in the public interest if it is likely to contribute significantly to public understanding of the operations or activities of the Federal Government, and is not primarily in the commercial interest of the requester.

(b) When determining fee waiver requests, CIGIE will consider the following six factors:

(1) The subject of the request: whether the subject of the requested records concerns the operations or activities of the Federal Government;

(2) The informative value of the information to be disclosed: whether the disclosure is likely to contribute to an understanding of Federal Government operations or activities;

(3) The contribution to an understanding of the subject by the public likely to result from the disclosure: whether the disclosure will contribute to the public understanding;

(4) The significance of the contribution to the public understanding: whether the disclosure is likely to significantly contribute to the public understanding of Federal Government operations or activities;

(5) The existence and magnitude of a commercial interest: whether the requester has a commercial interest that would be furthered by the disclosure of the requested records; and

(6) The primary interest in disclosure: whether the magnitude of an identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(c) CIGIE may, in its discretion, waive or reduce fees associated with a records request, regardless of whether a waiver or reduction has been requested, if the agency determines that disclosure will primarily benefit the general public.

(d) CIGIE will waive fees without discretion in all circumstances where the amount of the fee is \$25.00 or less.

(e) CIGIE will notify the requester regarding whether the fee waiver has been granted. A requester may appeal a denial of a fee waiver request only after a final decision has been made on the initial FOIA request.

Dated: December 4, 2012

Phyllis K. Fong,

Chairperson of the Council of the Inspectors General on Integrity and
Efficiency.

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